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Docket No.: SYN-064 C

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10/20/05

Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

Applic. No. : 10/010,246 Confirmation No.: 5866
Applicant : Robert Sixto Jr., et al.
Filed : December 6, 2001
Title : Surgical Clips Particularly Useful in the
Endoluminal Treatment of Gastroesophageal Reflux
Disease (GERD)
Group Art Unit : 3731
Examiner : Bradford C. Pantuck
Docket No. : SYN-064 C
Customer No. : 44338

Mail Stop Appeal Brief-Patents
Hon. Commissioner for Patents
Alexandria, VA 22313-1450

R E P L Y B R I E F

S i r :

This is a reply brief in response to the Examiner's Answer dated August 23, 2005, sustaining the rejections of claims 1-10, 17, 18, and 21-31.

Section 112 Rejections

An examination of the three Office actions in the instant application reveals the absence of the new rejections. At no time prior to appeal did the Examiner raise these issues. In fact, the Examiner even issued the anticipation rejection of claims 17 and 18 without mentioning this alleged non-enablement.

Regardless, the rejections fail on their face.

First, the Examiner contends that there is no support for the "two deformable retainers" feature in claims 3, 7 to 10, 24, and 28 to 31. The Examiner, however, fails to compare FIGS. 19, 20, 21, 22, 23, and 24 and the associated text on page 9 of the specification with these claims. Clearly, the specification discloses and describes in detail two retainers 320, 322 and 420, 422. Each of these two retainers 320, 322, 420, 422 deform.

Second, the Examiner contends that there is no support for the "plurality of surgical clips" feature of claim 18. It is respectfully noted that the instant application incorporates by reference co-owned application Serial No. 10/010,908, corresponding to U.S. Patent Publication No. 2002/0198537. Not only does this incorporated text show, disclose, and enable a plurality of clips (see, e.g., FIGS. 11, 17, 18, 19, 20), but the instant application further discloses the applier having a plurality of clips on page 17 of the specification as well as on page 18, lines 22 to 24. The process for delivering multiple clips is described on page 21, for example, and other instances of "clips" are replete in the specification.

Section 102 and 103 Rejections

The Examiner's arguments with regard to the prior art are mostly repetitive of arguments already made. Therefore, to avoid redundancy, applicants will only address and respond to a few points.

McQuilkin

With regard to claims 5 and 26, the Examiner appears to argue (on page 9 of the Answer) that there is no disclosure in the specification for the decoupling retainer. Respectfully, FIGS. 21 to 24 clearly disclose such a decoupling retainer 420, 422 and the specification at page 26 more than clearly describe the decoupling of the retainers 420, 422. Thus, the Examiner's argument is erroneous. Further, severing the retainer of McQuilkin would entirely destroy its utilitarian features. And, there is absolutely no disclosure to destroy the retainer in the manner suggested by the Examiner.

DiGiovanni

The response to the Examiner's argument regarding non-enablement of claim 18 is addressed above.

Chen

The Examiner contends that claims 1, 3 to 6, and 21 to 25 do not provide any description to which direction the retainer is extending. This argument entirely disregards features clearly set forth in the claims directly relating to these attributes. For example, in claim 1, the retainer is different from the first arm, the second arm, and the bridge. The retainer "extend[s] past one end of the arm in a direction" and the "length in said direction" is pi times the distance between the arms when the arms are substantially parallel to one another.

Similarly, the retainer of claim 21 "extend[s] past one end of said arms in a direction" and the retainer of claim 22 "extend[s] from one of said arms."

For the foregoing reasons, Appellants believe none of the prior art cited anticipates the present claims. Appellants therefore respectfully urge that this honorable Board allow claims 1-10, 17, 18, and 21-31.

Respectfully submitted,

 REG. NO. 44,154

For Appellants

Date: October 20, 2005

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Docket No.: SYN-064C

CERTIFICATION OF MAILING OR TRANSMISSION

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Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applic. No.	:	10/010,246	Confirmation No: 5866
Applicant	:	Robert Sixto, Jr. et al.	
Filed	:	December 6, 2001	
Art Unit	:	3731	
Examiner	:	Bradford C. Pantuck	
Title	:	Surgical Clips Particularly Useful in the Endoluminal Treatment of Gastroesophageal Reflux Disease (GERD)	

Docket No. : SYN-064C
Customer No.: 44338

LETTER REQUESTING ENTRY OF NEW POWER OF ATTORNEY

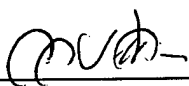
Hon. Commissioner for Patents,
Alexandria, VA 22313-1450

Sir:

On March 21, 2005, undersigned counsel submitted a Revocation of Prior Powers of Attorney and New Power of Attorney to the USPTO by telefax. A copy of the documents, as submitted, is enclosed. To date, the USPTO records do not reflect the New Power Attorney and the Office is respectfully requested to change the USPTO

records to reflect practitioners associated with Customer Number 44338 as attorneys of record.

Respectfully submitted,

 REG. NO. 44,154
For Applicants

Date: October 20, 2005

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TRANSACTION REPORT

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PAGE 03/06

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Hon. Commissioner for Patents
Alexandria, VA 22313-1450

**POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST
(REVOCATION OF PRIOR POWERS)**

- As assignee of record of the entire interest of all US applications attached hereto on a separate sheet of paper.

REVOCATION OF PRIOR POWERS OF ATTORNEY

All powers of attorney previously given are hereby revoked and

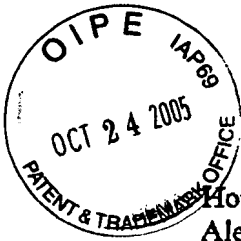
NEW POWER OF ATTORNEY

is appointed to practitioners associated with Customer Number

44338

to prosecute and transact all business in the Patent and Trademark Office connected therewith.

Address all correspondence to:



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Hon. Commissioner for Patents
Alexandria, VA 22313-1450

**POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST
(REVOCATION OF PRIOR POWERS)**

- As assignee of record of the entire interest of all US applications attached hereto on a separate sheet of paper.

REVOCATION OF PRIOR POWERS OF ATTORNEY

All powers of attorney previously given are hereby revoked and

NEW POWER OF ATTORNEY

is appointed to practitioners associated with Customer Number


44338

to prosecute and transact all business in the Patent and Trademark Office connected therewith.

Address all correspondence and telephone calls to:

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Miami, FL 33131-4332

Attached to this power is a "STATEMENT UNDER 37 C.F.R. 3.73(b)."


By: Sean McBrayer
For: ID, LLC

3/21/05
Date



Approved for use through 07/31/2008. OMB 0851-0031
 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
 Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

STATEMENT UNDER 37 CFR 3.73(b)

Applicant/Patent Owner: ID, LLC

Application No./Patent No.: see enclosure Filed/Issue Date: see enclosure

Entitled:

ID, LLC, a limited liability company
 (Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of less than the entire right, title and interest.
 The extent (by percentage) of its ownership interest is _____ %

in the patent application/patent identified above by virtue of either:

A. ☒ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.

OR

B. ☐ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

1. From: _____ To: _____
 The document was recorded in the United States Patent and Trademark Office at
 Reel _____, Frame _____, or for which a copy thereof is attached.
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☐ Additional documents in the chain of title are listed on a supplemental sheet.

☐ Copies of assignments or other documents in the chain of title are attached.

[NOTE: A separate copy (i.e., a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

Sean McBrayer
 Signature

Sean McBrayer

Printed or Typed Name

VP Operations

Title

3/21/05
 Date
(305) 716-7013
 Telephone Number

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Attachment to Statement under 37 C.F.R. 3.73(b)

Application No.	Filing Date	Title	Reel/Frame
09/891,775	June 25, 2001	Surgical Clip	011942/0972
10/010,244	December 6, 2001	Methods for the endoluminal treatment of gastroesophageal ...	013495/0303
10/010,247	December 6, 2001	Apparatus for the endoluminal treatment of gastroesophageal...	013510/0605
10/010,246	December 6, 2001	Surgical clips particularly useful in the endoluminal treatment of ...	013495/0844
10/151,529	May 20, 2002	Surgical clips particularly useful in the endoluminal treatment of ...	012921/0512
10/252,079	September 20, 2002	Surgical fastener particularly for the treatment of gastroesophageal...	015309/0074
10/252,069	September 20, 2002	Instrument for applying a surgical fastener particularly for the ...	015309/0050
10/252,078	September 20, 2002	Method of performing a treatment for gastroesophageal reflux ...	015309/0054
10/728,389	December 5, 2003	Tissue retractor and method for using the retractor	015563/0894

**Attachment to Power of Attorney by Assignee of Entire Interest
(Revocation of Prior Powers)**

Docket Number	Application No.	Filing Date	Title
SYN-056	09/891,775	June 25, 2001	Surgical Clip
SYN-064 A	10/010,244	December 6, 2001	Methods for the endoluminal treatment of gastroesophageal ...
SYN-064 B	10/010,247	December 6, 2001	Apparatus for the endoluminal treatment of gastroesophageal...
SYN-064 C	10/010,246	December 6, 2001	Surgical clips particularly useful in the endoluminal treatment of ...
SYN-064 CIP	10/151,529	May 20, 2002	Surgical clips particularly useful in the endoluminal treatment of ...
SYN-066 A	10/252,079	September 20, 2002	Surgical fastener particularly for the treatment of gastroesophageal...
SYN-066 B	10/252,069	September 20, 2002	Instrument for applying a surgical fastener particularly for the ...
SYN-066 C	10/252,078	September 20, 2002	Method of performing a treatment for gastroesophageal reflux disease ...
SYN-8312	10/728,389	December 5, 2003	Tissue retractor and method for using the retractor